

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

Michael Estrada, et al.,

Plaintiffs

v.

Tri Point Homes, et. al.,

Defendants

Case No. 2:23-cv-01878-JAD-BNW

**Order Dismissing
and Closing Case**

Michael Estrada filed this action on behalf of himself, Nubia National Trust Bank, and the Arawak Indigenous Indian Nation, alleging “fraud and illegal business practices by Tri-Point Homes and others.”¹ On December 28, 2023, this court dismissed the amended complaint and gave Estrada until January 28, 2024, to file a second amended complaint if he could correct the deficiencies in his first amended complaint.² Estrada was warned that his failure to file a second amended complaint by that deadline would result in this case being dismissed and closed.³ Estrada neither filed an amended complaint by that deadline nor moved for an extension of time to do so.

The law permits a district court to dismiss an action based on a party’s failure to comply with a court order.⁴ In determining whether to dismiss an action on this ground, the court must consider: (1) the public’s interest in expeditious resolution of litigation; (2) the court’s need to

¹ ECF No. 4 (amended complaint).

² ECF No. 10.

³ *Id.* at 2.

⁴ *See Ferdik v. Bonzelet*, 963 F.2d 1258, 1260–61 (9th Cir. 1992) (dismissal for failure to comply with an order requiring amendment of complaint).

1 manage its docket; (3) the risk of prejudice to the defendants; (4) the public policy favoring
2 disposition of cases on their merits; and (5) the availability of less drastic alternatives.⁵

3 The first two factors, the public’s interest in expeditiously resolving this litigation and the
4 court’s interest in managing its docket, weigh in favor of dismissal of the plaintiff’s claims. The
5 third factor, risk of prejudice to defendants, also weighs in favor of dismissal because a
6 presumption of injury arises from the occurrence of unreasonable delay in filing a pleading
7 ordered by the court or prosecuting an action.⁶ The fourth factor—the public policy favoring
8 disposition of cases on their merits—is greatly outweighed by the factors favoring dismissal.

9 The fifth factor requires the court to consider whether less drastic alternatives can be used
10 to correct the party’s failure that brought about the court’s need to consider dismissal.⁷ Courts
11 “need not exhaust every sanction short of dismissal before finally dismissing a case, but must
12 explore possible and meaningful alternatives.”⁸ Because this action cannot proceed until and
13 unless plaintiff files a complaint that contains plausible claims, the only alternative is to enter a
14 second order setting another deadline. But the reality of repeating an ignored order is that it
15 often only delays the inevitable and squanders finite resources along the way. The circumstances
16 here do not indicate that this case will be an exception: there is no hint that the plaintiff needs

18 ⁵ *In re Phenylpropanolamine Prod. Liab. Litig.*, 460 F.3d 1217, 1226 (9th Cir. 2006) (quoting
19 *Malone v. U.S. Postal Serv.*, 833 F.2d 128, 130 (9th Cir. 1987)).

20 ⁶ *See Anderson v. Air West*, 542 F.2d 522, 524 (9th Cir. 1976).

21 ⁷ *Yourish v. Cal. Amplifier*, 191 F.3d 983, 992 (9th Cir. 1999) (explaining that considering less
22 drastic alternatives *before* the party has disobeyed a court order does not satisfy this factor);
23 *accord Pagtalunan v. Galaza*, 291 F.3d 639, 643 & n.4 (9th Cir. 2002) (explaining that “the
persuasive force of” earlier Ninth Circuit cases that “implicitly accepted pursuit of less drastic
alternatives prior to disobedience of the court’s order as satisfying this element[.]” i.e., like the
“initial granting of leave to amend coupled with the warning of dismissal for failure to
comply[.]” have been “eroded” by *Yourish*).

⁸ *Henderson v. Duncan*, 779 F.2d 1421, 1424 (9th Cir. 1986).

1 additional time nor evidence that he did not receive the court's order. Setting another deadline is
2 thus not a meaningful alternative given these circumstances. So the fifth factor favors dismissal.

3 Having thoroughly weighed these dismissal factors, I find that they weigh in favor of
4 dismissal. IT IS THEREFORE ORDERED that **THIS ACTION IS DISMISSED** for failure to
5 file an amended complaint by the court-ordered deadline, leaving no claims pending. The Clerk
6 of Court is directed to **ENTER JUDGMENT** accordingly and **CLOSE THIS CASE**. **No other**
7 **documents may be filed in this now-closed case.**

8 Dated: April 2, 2024

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10 U.S. District Judge Jennifer A. Dorsey
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